IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 79-479

R. JOHN GENINS,
Petitioner

vs.

HUGH S. GEIGER, JR. and
JUNE W. GEIGER,
Respondents

APPENDIX TO

Petition for a Writ of Certiorari to the Georgia Supreme Court and Court of Appeals of Georgia

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Georgia Supreme Court and the Court of Appeals of Georgia

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Presented by:

R. John Genins
44 Broad Street, N. W.
Atlanta, Georgia 30303

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

HUGH S. GEIGER, JR.
and JUNE W. GEIGER,

Plaintiffs,

vs. CIVIL ACTION FILE NO. B-65363

R. JOHN GENINS,

Defendant.

ORDER

The relief sought in the complaint filed by the complainants in this Court on May 27, 1971 is hereby denied.

Having denied the prayer for a temporary restraining order it follows the Ex Parte Order entered May 27, 1971 is hereby dissolved.

This 9th day of August, 1971.

/s/ Osgood O. Williams
OSGOOD O. WILLIAMS, JUDGE
Fulton Superior Court
Atlanta Judicial Circuit

IN THE SUPERIOR COURT OF FULTON CO.
STATE OF GEORGIA

HUGH S. GEIGER, JR., and
JUNE W. GEIGER,

Plaintiffs,

vs. C.A. FILE NO.
B-65363

R. JOHN GENINS,

Defendant.

JUDGMENT OF THE COURT

AS TO PLAINTIFF HUGH S. GEIGER, JR.

The above captioned case having come on before me at regular session for trial before a jury, and both Plaintiffs and the Defendant having rested their case and introduced their evidence, the Court ex mere motu, and upon motion joined by counsel for Plaintiff Hugh S. Geiger, Jr., herewith renders the following findings of fact:

1.

The contract between Plaintiff

Hugh S. Geiger, Jr., and Defendant, dated December, 1970, as amended January, 1971, is a contract in a criminal case calling for a contingency dependent upon the acquittal of the defendant in a criminal case. I find that the contract, as amended, is so intertwined that the portions of the contract which are void as against public policy are inseperable from those portions of the contract which would not per se be in violation of public policy. I find further that the portions of the contract are therefore not severable.

It is my conclusion of law that the contract, as amended, is void, illegal, and in violation of public policy, and I conclude that as a matter of law the contract is unenforceable in its entirety and in each and every aspect thereof.

I find it undisputed between the parties that the Plaintiff, Hugh S. Geiger,

Jr. has paid to the Defendant, pursuant to the terms of the above contract, the sum of $1700.00, which I herewith order the Defendant to return to the Plaintiff Hugh S. Geiger, Jr.

I further find that the Plaintiff Hugh S. Geiger, Jr. collateralized his obligations under the contract by pledging and/or physically delivering to the Defendant the following items of property:

(a) Plaintiff Hugh S. Geiger, Jr.'s undivided interest in one thousand seven hundred twenty (1,720) shares of capital stock in Banker's Fidelity Life Insurance Company;

(b) Plaintiff Hugh S. Geiger, Jr.'s undivided fifty percent(50%) interest in one thousand dollar ($1,000.00) face value City of Atlanta airport bond;

(c) That Defendant has realized the sum of $323.00 in interest attributable to Plaintiff Hugh S. Geiger, Jr., from the

aforementioned City of Atlanta airport bond, and the capital stock of Banker's Fidelity Life Insurance Company;

(d) A first mortgage secured by certain property in Chatham County. Defendant has sold said mortgage to the mortgagor for the approximate sum of $10,000 and inasmuch as Defendant is unable to return said mortgage to Plaintiff Hugh S. Gieger, Jr., I herewith order Defendant to repay to Plaintiff Hugh S. Gieger, Jr. all sums Defendant realized from the sale of said mortgage together with interest from October, 1971 through September, 1976, at the legal judgment rate;

(e) A law library consisting of: American Law Reports Digest; American Law Reports Third; American Law Reports Federal; Anderson Uniform Commercial Code; Recovery for Wrongful Death Treatises; Georgia Code Annotated; Am Jur Legal Forms; Am Jur Pleading and Practice Forms; Am Jur Second

and Am Jur; United States Supreme Court, Lawyer's Edition; United States Supreme Court Digest; Encyclopedia of Georgia Law; Am Jur Proof of Facts; Am Jur Trials; Internal Revenue Code and Regulations, yearly volume; Handling Accident Cases; United States Code Annotated; Georgia Appeals Reports; Georgia Digest; American Law Reports, Later Case Service. As relates to the law library, it is understood by the parties that the books physically have become unavailable and I do not order the Defendant to return said law books. I simply order the security interest Defendant had therein extinguished.

(f) I further find that Defendant has received a second mortgage on certain property located in East Point, Georgia, but it is stipulated by all parties that the foreclosure of said property by the first mortgagee has defeated both the right of Plaintiff, Hugh S. Geiger, Jr., and the

right of Defendant, and I herewith simply extinguish the interest of Defendant without requiring him to make restitution of either the mortgage or the value thereof.

It is the judgment and finding of this Court that the return of any and all these goods (and/or the equivalent value as to the first mortgage in Chatham County) will return all parties to a status quo and return the parties to their positions before the entering of the contract.

2.

The Court further finds that Plaintiff Hugh S. Geiger, Jr. gave $7700 in demand notes of the Florida Loan Company, Inc. to Defendant to collect for Plaintiff Hugh S. Geiger, Jr. and that said Defendant, who claims no interest in said notes, is herewith ordered to return said notes to Plaintiff Hugh S. Geiger, Jr. In the event said notes physically have been misplaced, lost or destroyed, Defendant is ordered to execute

a proper affidavit attesting to their having been lost, misplaced or destroyed so that duplicate notes may be issued.

The Court further finds that Plaintiff Hugh S. Geiger, Jr. had loaned to Defendant one Sony BP-40 battery operated TC-40 Cassette Tape-recorder, serial number 024241, and one Sony Model AC5BW Ac Adaptor and Charger, said tape recorder being of the value of $125.00. Defendant is herewith ordered to return either the tape recorder to Plaintiff Hugh S. Geiger, Jr., or in lieu thereof pay to Plaintiff Hugh S. Geiger, Jr., the sum of $125.00 in addition to all other sums listed heretobefore.

3.

The Court further orders the Defendant to return to Plaintiff Hugh S. Geiger, Jr., any and all files and/or documents which are in the possession of Defendant and which Defendant received from Plaintiff Hugh S. Geiger, Jr.

4.

The Court submitted to the jury the question of whether or not Plaintiff Hugh S. Geiger, Jr. discharged the Defendant, thereby keeping him from concluding his services, or whether or not the Defendant abandoned Plaintiff Hugh S. Geiger, Jr.'s cause. The Court further submitted to the jury the question of the reasonable value of the services, if any, of Defendant as rendered to Plaintiff Hugh S. Geiger, Jr. The jury having found for the Plaintiff Hugh S. Geiger, Jr., thereby finding that the reasonable value of services, if any, rendered by Defendant to Plaintiff Hugh S. Geiger, Jr. was nothing, the verdict of the jury is herewith made the judgment of the Court and all costs of these proceedings are herewith cast against Defendant, R. John Genins.

SO ORDERED AND ADJUDGED this 22 day of September, 1976. Claude Shaw, Judge

ENTERED October 6, 1976

July 15, 1977

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

R. John Genins v. Hugh S. Geiger, Jr., et.al.

From the Superior Court of Fulton County

It is ordered that this case be hereby transferred to the Court of Appeals.

So Certified by Eva F. Townsend, Deputy Clerk.

IN THE COURT OF APPEALS OF GEORGIA

NOVEMBER 14, 1977

54579. GENINS v. GEIGER et al. Sh-166

SHULMAN, JUDGE.

Appellees, husband and wife, brought an equitable petition to cancel certain security instruments executed in favor of appellant-attorney. Appellees argued, in part, that the instruments were void as being tainted by a contract wherein appellant allegedly agreed to represent appellee-husband in a criminal prosecution for a contingency fee. Appellant defended by asserting that the original agreement was valid and that, even if the original agreement were invalid, a subsequent amendment purged any alleged illegality.

The trial court held that the contract was void as against public policy and cancelled the instruments. After the equitable features were removed from the

case, the case was submitted to a jury to determine(1) whether appellant had wrongfully abandoned or breached any implied agreement between attorney and client and (2) if appellant had not breached or abandoned but rather was discharged, whether appellant was entitled to be compensated for the reasonable value of services rendered(quantum meruit). This appeal follows a judgment entered on a jury verdict in favor of appellees husband and wife.

1. Appellant urges that the trial court erred in denying his motions for directed verdict on the issues of abandonment and breach of contract. He argues that appellee testified that the alleged abandonment occurred on a particular day of the criminal trial. Appellant submits that appellee's contention is controverted by the transcript of the criminal trial and the testimony of two attorneys who were present at the criminal trial. This argument must

fail.

Appellant was not limited by his testimony to establishing abandonment only on the particular day alleged. See 81A-115. There was sufficient evidence to authorize a finding of abandonment at a later date.*1

2. The trial court held the attorney-client contract void on the grounds that it provided for a contingency in a criminal prosecution and refused to charge the jury on recovery under a contract theory. Rather, the case was submitted to the jury solely under a quantum meruit theory of recovery. Appellant contends that this ruling constituted reversible error.

The original contract clause provided for payment of a fixed retainer fee for representation in criminal proceedings; a fixed sum payable on the first day of trial, and payment of a sum certain in the event of a favorable final non-appealable disposition

*1 After Motion for Rehearing pointed out Dr. Geiger's Admissions in Record which rendered this impossible, the official published opinion omitted"at a later date".

of the case regardless of how this favorable disposition came about.

A. Because there was no agreement to relieve the client of the costs and expenses of litigation, this is not a champertous contract. See Moses v. Bagley & Sewell, 55 Ga. 283(5). Cases holding such contracts void against public policy and barring quantum meruit recovery, see e.g., Sapp v. Davids, 176 Ga. 265(168 SE 62, 85 ALR 1361) do not apply. Nor is this a case involving intrinsically illegal acts which void the contract as being contrary to public policy in its totality. See, e.g. Cates v. Kelley, 55 Ga. App 786(191 SE 384)(contract between layperson and lawyer wherein former agreed to find witnesses and share in fee void against public policy; no recovery on contract).

B. The contractual provision which expressly provides for payment of $25,000

contingent on a disposition of the criminal charges favorable to appellee-client is void as against public policy. Cf. Evans v. Hartley, 57 Ga. App. 598(196 SE 273) (contingency fee provision in divorce action is void as against public policy). See also Restatement of Contracts Sec.542(2) (declaring contracts involving a contingency fee is a criminal prosecution illegal); Directory Rule 2-106(c) promulgated pursuant to Code Ann.Sec. 24-4542(also proscribing such arrangements; effective July 1, 1971). The fact that an arrangement for a contingency fee is void will not preclude recovery on a quantum meruit basis. See Evans v. Hartley, supra at 603, citing McCurdy v. Dillon, 135 Mich. 678(98 NW 746) with approval. This is in accord with the rule that "although there may be no recovery on the (void contingency provision of the) contract itself, recovery in quantum meruit is ordinarily permissible... if the services

themselves are not intrinsically illegal, or the conduct surrounding execution of the contract violates no overriding public interest, and the services are of a compensable nature." 100 ALR2d 1378, Sec. 2, 1381. Here"the contract itself was merely for the legal purpose of representing a client charged with crime...(and the attorney) may recover for the usual and necessary lawful services performed in connection therewith, although it goes without saying he cannot recover for acts contrary to public policy..."(emphasis supplied)Iteld v. Karp, 85 Ga. App. 835, 838(70 SE2d 378)(unlawful acts alleged therein; attempts to suppress criminal prosecution). The judge, therefore, properly submitted the case to the jury on a quantum meruit theory.

C. Appellant contended, and evidence was presented, that a subsequent amendment

to the contract constituted a novation which purged any illegality. Under the terms of this alleged amendment, a clause providing for payment of a sum certain upon reinstatement of appellee's medical license was substituted in lieu of the express contingency fee. We need not decide the legality of the reinstatement provision(i.e. whether the clause is sufficiently removed from the criminal prosecution so as not to call for a contingency fee in a criminal prosecution) because appellee's license was not reinstated.

It cannot be questioned that appellee agreed to pay appellant a fixed retainer fee and a fixed amount payable on the first day of the trial for representation in a criminal prosecution. Under the alleged novation, this part of the contract may stand alone. See Evans v. Hartley, supra,p. 603. Therefore, even if the arrangement calling for payment of a fee contingent upon re-

instatement of appellee's medical license were void as being against public policy, the "...will not vitiate this valid provision of the contract(concerning representation in t he criminal prosecution)... The plaintiff had the right to proceed under the valid part of the severable contract, and the court erred in....(refusing to present this issue to the jury)." Evans v. Hartley, supra at 603.

D. However, we hold that this error under the circumstances of this case did not constitute reversible error. The contractual provision requiring payment of a fixed retainer fee and a sum certain on the first day of trial contemplated representation in the criminal prosecution. Under the terms of this contract, the whole service was the essence of the contract insofar as represtation is concerned, and that portion of the contract is entire. Code Ann. Sec.20-112.(Our holding in Division 2C is only

that the contingency clause is severable). See generally 3A Corbin Contracts Sec.694 fn 46(a contract may be declared to be "entire" and "divisible" at the same time).

The court properly charged the jury that if they found appellant-attorney had wrongfully abandoned the criminal case, then the jury was to find in favor of client-appellee. The jury was also instructed that if they found that the attorney had been wrongfully discharged by the client and that the attorney did not abandon the criminal prosecution, they they were to find for attorney appellant. He further instructed that if the jury found for attorney-appellant, damages, if any, were to be determined according to quantum meruit.

The jury found for appellee-client and appellee wife. Therefore, under the instructions as given, the jury found that the appellant-attorney had abandoned during the course of performance(i.e., during

criminal prosecution). "'A party to an entire contract who has partly performed it and subsequently abandons the further performances according to its stipulations, voluntarily and without fault on the part of the other party or his consent thereto, can recover nothing for such part performance.(Cits)" MacLeod v. Belvedale, Inc., 115 Ga.App. 444,445(154 SE2d 756). The remedy for recovery of the value of services rendered, if there was one, was in quantum meruit. As the case was submitted to the jury on this theory, no harmful error was committed.

3. By the time the civil action came to trial appellant had foreclosed on certain property pledged by appellee as security for the contract. Appellant contends that the court erred in refusing to inform the jury that a verdict in favor of appellees would necessarily require appellant to return proceeds from the

foreclosed property to appellees. We disagree.

Defendant did not submit a written request to so charge. "Defendant's oral request...does not comply with the provisions of Code Ann. Sec. 70-207(b) relating to requests to charge." Wells v. State, 126 Ga. App. 130,134(190 SE2d 106). In the absence of a timely written request, there could be no error.

Moreover, a reasonable juror could not have believed that a finding against appellant-attorney would authorize the attorney to retain proceeds from wrongful foreclosure. The jury was fully aware that the purpose of the lawsuit was to seek the return of all funds and properties paid or pledged by appellees to appellant.

4. Appellant urges that the court committed prejudicial error by analogizing the contract to the type of contracts used by the underworld. A review of the charge

shows that no such analogy was made. The judge merely used the "underworld" term "spring (a defendant)."

5. At trial below the record of the criminal trial in the Fulton County Superior Court was admitted into evidence(that record being the subject of the abandonment claim. See Sec. 38-601 et.seq. Appellant contends that it was error to admit a statement of the trial judge who presided over the criminal prosecution that "I want the record to show that this gentlemen..... (appellant-attorney) left this courtroom and abandoned this case on last Friday, and has not reported at anytime to this court." It is urged that the statement constituted prejudicial hearsay.

The statement complained of is not subject to the hearsay rule. Hall v. State, 141 Ga. App. 289(2)(233 SE2d 262). Accordingly, the admission of this testimony was not error.

6. Appellant, citing Code Ann.Sec. 38-1705, contends that he was denied his right of thorough and sifting crossexamination. Appellant was not permitted to elicit testimony from appellee concerning whether appellant had failed to pay other attorneys in the past. This line of cross-examination was properly disallowed. See Code Ann. Sec. 38-202. Similar acts or omissions on other and different occasions are not generally admissible to prove like acts or omissions at a different time and place. W.Ga. Pulpwood v. Stephens, 128 Ga. App. 864(5)(198 SE2d 420).

7. Appellant complains that the court erred as to his counterclaim seeking recovery for services rendered in failing to exclude testimony concerning the amount appellant had received by foreclosure on appellee's property. He also claims the court erred in directing a verdict as to appellee's wife who he contends wrongfully

converted property in which appellant had a security interest by reason of his representation of appellee-client. The jury verdict in favor of appellee-client renders these enumerations immaterial. See division 2C of this opinion.

8. Enumerations 14 through 17 are not argued in appellant's brief. Under the rules of this court they are deemed abandoned. Power v. Tallant, 137 Ga.App. 575 (224 SE2d 534).

Judgment affirmed. Smith, J. and Banke, J. concur.

December 5, 1977

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed: 54579. R. J. Genins v. H.S. Geiger, Jr., et.al. Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Clerk's Certificate

Clerk's Office, Supreme Court of Georgia
February 1, 1978, Atlanta
Letter to Counsel:

Case No. 33327, Genins v. Geiger, et al. The Supreme Court today denied the writ of certiorari in this case. All the justices concur.

Very truly yours,
/s/ Mrs. Joline B. Williams, Clerk

Clerk's Office, Supreme Court of Georgia
February 23, 1978, Atlanta
Letter to Counsel:

The motion for reconsideration was denied today: Case No. 33327, Genins v. Geiger, et al.

Yours very truly,
/s/ Mrs. Joline B. Williams, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

HUGH S. GEIGER, JR., and
JUNE W. GEIGER,

C.A. FILE NO.
B-65363

Plaintiffs,

vs.

R. JOHN GENINS,

Defendant.

JUDGEMENT FOR PLAINTIFF JUNE W. GEIGER

The above-styled action having come on for trial before this Court and the Court having directed a verdict in favor of Plaintiff June W. Geiger at the close of all evidence and the jury having returned a verdict in accordance with the Court's direction, the following JUDGMENT is hereby granted in favor of June W. Geiger and against Defendant:

1. Judgment is granted in favor of Plaintiff June W. Geiger for one-half interest in 1720 shares of Bankers Fidelity Life Insurance stock in possession of

Defendant.

2. Judgment is granted in favor of Plaintiff June W. Geiger for one-half interest in one City of Atlanta Airport Revenue Bond in possession of Defendant.

3. Judgment is granted in favor of Plaintiff June W. Geiger in the amount of three hundred twenty-three dollars($323.00) plus costs of this action.

4. Judgment is granted in favor of Plaintiff June W. Geiger on Defendant's counterclaim.

This 20 day of March, 1978, nunc pro tunc, September 16, 1976.

/s/ Claude D. Shaw, Judge

Entered of Record March 20, 1978

September 28, 1978

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

R. John Genins v. Hugh S.Geiger, Jr.,et al. From the Superior Court of Fulton County

It is ordered that this case be hereby transferred to the Court of Appeals.

IN THE COURT OF APPEALS
STATE OF GEORGIA

March 16, 1979

57049. GENINS V. GEIGER Sm-11
SMITH, Judge.
This appeal presents only a "rehash" of issues previously decided by this court. Genins v. Geiger, 144 Ga. App. 244 (240 SE2d 745)1977. That decision remains the law of the case and disposes of this appeal adversely to appellant.

Judgment affirmed. Quillian, P,J. and Birdsong, J., concur.

March 30, 1979

The Honorable Court of Appeals met

pursuant to adjournment. The following order was passed: 57049. R.J.Genins v. H. S. Geiger, Jr., et al. Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Clerk's Office,Supreme Court of Georgia
June 1, 1979, Atlanta Letter to Counsel:
The Supreme Court today denied the writ of certiorari and Respondent's motion for dilatory damages in this case. All the justicies concur. Very truly yours,
Clerk /s/ Mrs. Joline B. Williams

Clerk's Office,Supreme Court of Georgia
June 22, 1979, Atlanta Letter to Counsel:
The motion for reconsideration was denied today: Case No. 45045,Geninsv. Geiger et al.
Very truly yours,

Clerk /s/ Mrs. Joline B. Williams

STATE OF GEORGIA
SUPREME COURT
ATLANTA

June 25, 1979

I, Joline B. Williams, Clerk of the Supreme Court of Georgia, do hereby certify that the Court of Appeals record was not made available for filing in this Court in the Application for Certiorari of R. John Genins, Supreme Court Case No. 35045, R. John Genins v. Hugh S. Geiger, Jr., et al., as appears from the records and files of this office.

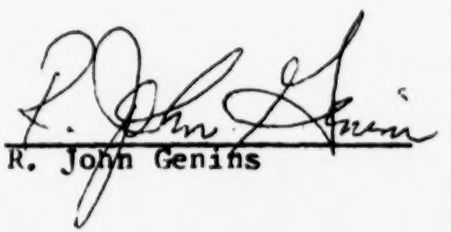
Witness my signature and the seal of said court hereto affixed the day and year first above written.

/s/ Joline B. Williams, Clerk

SEAL OF SUPREME COUPT OF GEORGIA

CERTIFICATE OF SERVICE

I do hereby certify that I have served Respondents with a copy of the within Appendix and the previously transmitted Petition for the Writ of Certiorari by depositing same in the U.S. Mails with adequate postage affixed, addressed to: Roman A. DeVille, Esquire, Suite 1717, Peachtree Center South, 225 Peachtree St., N.E., Atlanta, Georgia, 30303; and Richard Greenstein, Esquire, 800 Fulton Federal Building, 11 Pryor Street, S.W., Atlanta, Georgia, 30303. This October 16, 1979.



R. John Genins